IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HONOURBALE SRI JUSTICE ELIPE DHARMA RAO

W.P. No. 17033 OF 2005

Dated : 2nd August, 2005

Between:

MBP Sekhar

Petitioner

AND

The Municipal Corporation of Kakinada,

Kakinada, East Godavari District and another.

Respondents

THE HONOURBALE SRI JUSTICE ELIPE DHARMA RAO

W.P. No. 17033 OF 2005

ORAL ORDER:

Assailing the action of the respondents in demolishing a portion of the premises known as *Glass House* bearing D.No.33-1-1, Subhash Road, Kakinada, in pursuance to the notice dated 13.7.2005, without following due process of law, the petitioner seeks a writ of mandamus to declare such an action as illegal and contrary to principles of natural justice.

The case of the petitioner is that he is the owner and possessor of the property. The father of the petitioner filed OS No. 434 of 1996 before the I Addl. Dist. Munsif, Kakinada, restraining the municipality from interfering with the said property and to declare that he is the owner of the said property. He also filed a suit OS No. 1312 of 1972 before the same court and the decree passed by the said court in favour was confirmed by this court in SA No. 6406 of 1979. It is further stated that OS No. 344 of 1986 was dismissed by the trial court holding that a suit for declaration was not filed. Aggrieved of the same, the petitioner's father filed AS No. 4 of 1993 before the IV Addl. District Judge, Kakinada. It is also stated that since the Municipality was bent upon to demolish the structure, the petitioner's father filed WP No. 2316 of 1997 seeking a direction not to demolish the structure and this court directed that pending appeal, the respondents therein shall maintain status quo. Subsequently, the appeal was allowed on 31.12.2001 holding that notice dated 10.6.1986, which was subject matter of OS No. 344 of 1986 issued by the municipality is illegal and restrained the municipality from initiating any action under the said notice.

While so, on up-gradation of the Municipality, under the process of development, by way of widening the roads, the officials of the first respondent have marked the portion of the petitioner's property for demolition. Aggrieved of the said, the petitioner filed WP No. 10572 of 2005 seeking a direction to the respondents to follow due process of law, which was accordingly disposed of on 28.4.2005 directing the respondents not to demolish the establishment without following the guidelines issued by a Division Bench of this court in WP No. 21198 of 1997 and Batch dated 3.2.1998. Inspite of the receipt of a copy of

the order, the 2nd respondent went to the shop in the first week of July, 2005 and informed that the shop would be demolished. In furtherance of the same, on 13.7.2005, the petitioner received notice from the first respondent calling upon the explanation of the petitioner, stating that one of the rooms is unauthorized constructed, to which the petitioner submitted reply dated 17.7.2005.

It is evident from the facts and circumstances of the case that no final order is passed. Until and unless final order is passed, considering the explanation of the petitioner, submitted in response to the show cause notice issued in compliance of the directions of this court, the respondents ought not to have visited the site. Therefore, the alleged action of the respondents in visiting the site with men and material to demolish a portion of the building of the petitioners is quite contrary to the orders passed by this court. Therefore, the respondents are directed not do demolish the portion of premises “glass house’ D. No. 33-1-1, S7ubash Road, Kakinada, without disposing of the explanation submitted by the petitioner and passing appropriate orders thereon.

The writ petition is accordingly disposed of. No order as to costs.

Elipe Dharma Rao, J.

August 2, 2005

MAS.